



POLICE DEPARTMENT

December 30, 2021

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Dynel Powell :

Tax Registry No. 940544 :

Strategic Response Group 3 Brooklyn :

Case No.

2020-22821

-----X
At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Samuel Yee, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE KEECHANT SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Dynel Powell, while assigned to Strategic Response Group #3 and while off-duty, on or about August 28, 2020, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that having been involved in a motor vehicle collision that resulted in property damage, said Police Officer left the scene of the collision or failed to provide his driver's license information, insurance information, or other pedigree information to the other motorist involved in the collision.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Said Police Officer Dynel Powell, while assigned to Strategic Response Group #3, on or about October 23, 2020, failed to fully cooperate with Special Operations Division Investigations Unit investigators when being questioned during a Department interview.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

P.G. 206-13, Page 2, Paragraph 12

INTERROGATION OF MEMBERS
OF THE SERVICE
DISCIPLINARY MATTERS

P.G. 203-08

FALSE OR MISLEADING STATEMENTS
GENERAL REGULATIONS

3. Said Police Officer Dynel Powell, while assigned to Strategic Response Group #3, on or about October 23, 2020, during a Department interview, was discourteous to Special Operations Division Investigations Unit investigators.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 23, 2021. Respondent, through his counsel, entered pleas of Not Guilty to Specifications 2 and 3, and pleaded Guilty to Specification 1¹. The Department called Lieutenant Salman Asghar as a witness. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Guilty of Specification 2 and Not Guilty of Specification 3. I recommend a penalty of the forfeiture of 35 vacation days and that Respondent be placed on one-year dismissal probation.

ANALYSIS

The following is a summary of the facts which are not in issue. On August 27, 2020, Respondent was off-duty and on vacation when he drove his personal vehicle from Long Island to Manhattan. At approximately 0030 hours on August 28, 2020, he was involved in an automobile accident in the vicinity of Fifth Avenue and 34th Street, where he rear-ended a motorist, resulting in approximately \$1,000.00 in damages to the motorist's vehicle. Video footage from the motorist's dashboard camera captured Respondent, from his vehicle, telling the motorist to pull over to the side of the street, before driving by the motorist's stopped vehicle and leaving the scene (Dept. Ex. 1 at 00:33:05-00:35:09). Respondent violated N.Y. Vehicle and Traffic Law § 600, committing a traffic infraction, when he left the scene of the accident without exhibiting his insurance card, driver's license, or registration to the motorist. Respondent proceeded to return home, where his delegate informed him that the Duty Captain was trying to

¹ Respondent pleaded Guilty to Specification 1 at trial on November 23, 2021 (T. 2-3, 77).

reach him. He called the Duty Captain and engaged in a conversation with him about the incident at approximately 0400 hours.

In September 2020, Lieutenant Salman Asghar of the Special Operations Division Investigations Unit was assigned to investigate the incident. During the course of the investigation, Lieutenant Asghar spoke to the motorist, who relayed that a male, approximately 6'1" or 6'2" tall, told him that he was a police officer, but did not provide any other information, including his driver's license or insurance. Lieutenant Asghar confirmed that the license plate number retrieved by the motorist² was the license plate to Respondent's vehicle.

Respondent was questioned by members of the Special Operations Division Investigations Unit, including Lieutenant Asghar, Captain Idris Guven and Sergeant Richard Huang, about the incident at an official Department interview on October 23, 2020. Respondent's attorney, Mr. Carl Varella, and his PBA delegate, Police Officer Wendell Kornegay were also present at the interview. At the start of the interview, Respondent was read the relevant portions of the Patrol Guide procedures 206-13 and 203-08.

The following is a summary of the relevant trial evidence.

Lieutenant Asghar testified that he knew Respondent when he worked at the 67th Precinct from 2005 to 2011 and Strategic Response Group 3 in 2015 or 2016, although he did not recall having any interactions or contact with Respondent at either assignment location (T. 23-25, 28, 52-54). Lieutenant Asghar described Respondent's demeanor and attitude at the October 23, 2020, official Department interview as "evasive and not very forthcoming" due to Respondent's inability to provide where he was coming from, the exact location of the accident, or who was with him (T. 21-23, 53). He explained that Respondent was "very dismissive in a way" based on

² Video footage from the motorist's dashboard camera showed the motorist following Respondent's vehicle and pulling up behind Respondent's vehicle stopped at a red light, where audio footage of a camera taking photographs is captured (Dept. Ex. 1 at 00:33:50-00:35:08).

Respondent giving his delegate “a little smile, which [he’d] never seen before” when he was asked if he was satisfied with his representation (T. 56). Lieutenant Asghar recalled, “Every question we had to ask him a couple of times to get the answer from him” (T. 23). He opined that “it seemed like [Respondent] was trying not to give answers” and “was just turning questions into another question back toward the investigators” (T. 30, 57). When Respondent stated in his interview that he did not remember the cross streets where the accident occurred, Lieutenant Asghar believed that Respondent was being evasive because “his demeanor at the time basically stated that he’s hiding the facts” (T. 33-34).

Lieutenant Asghar stated that, during the interview, he did not recall if any of the supervisors present, including Sergeant Huang or Captain Guven, attempted to define Respondent’s actions “in less than flattering” terms (T. 40). He also did not remember Captain Guven calling Respondent a “wise guy” during the interview (T. 50). Lieutenant Asghar confirmed that Respondent did not raise his voice or shout during the interview, and he did not yell or get up from the table when Captain Guven accused him of lying (T. 39, 46-47).

Respondent testified that, prior to the start of his official Department interview on October 23, 2020, he did not have the opportunity to discuss the allegations in detail with his attorney, nor did he review any video footage or documents related to the incident (T. 69-70, 72). Respondent testified that he was ordered to answer questions, and he never refused to answer any question (T. 72). He acknowledged that at times, during the questioning, he was unable to give a definitive answer (T. 73). Respondent explained that he did not remember everything about the accident, as the incident occurred approximately two months prior to the interview when the protests were transpiring, he was working regular tours with overtime, accumulating to approximately 12 to 15 hour tours, and [REDACTED] (T. 73, 110).

Respondent detailed that, during the interview, he did not raise his voice, tell the investigators to stop the questioning, use profane or abusive language, or act in a discourteous manner (T. 74). He did not try to avoid answering questions by giving misleading or incomplete answers (T. 75). However, Respondent felt like the investigators did not believe him (T. 74). Respondent explained that the investigators made him feel like he was in the wrong for taking a drive for the sole purpose of clearing his head without having a specific reason (T. 79, 106). He found it to be unwarranted that, during the interview, Captain Guven called him a “wise guy” and raised his voice at Respondent (T. 75). He described Captain Guven as seeming “upset,” and explained that, when his attorney attempted to speak to him privately, Captain Guven denied this request and informed Respondent that he would be suspended if he left his chair (T. 75-76). Respondent did not act in a discourteous manner after this occurred, nor did he challenge Captain Guven’s authority to ask questions (*Id.*). Respondent further stated that, when Captain Guven informed him that the investigators were in possession of video footage from the incident, Respondent asked to view the footage, but was ignored (T. 74).³

Respondent conceded that he told investigators at his official interview that he provided paperwork to the motorist containing his information when that was not true (T. 96-97). He admitted, at trial, that he did not exchange his insurance card, driver’s license, or registration with the motorist, nor did he provide the motorist with any pedigree information, including his name, or advise that he was a police officer (T. 65-66, 79-80). Respondent claimed that he did retrieve the motorist’s name and a picture of the motorist’s driver’s license, which he offered to supply to investigators at his interview (T. 81-82).

³ Respondent testified that he viewed the video footage for the first time with his attorney, Mr. Tynan, in preparation for trial (T. 75).

Regarding his obligations at his official Department interview, Respondent stated, “I felt like I had to say whatever they wanted to hear because the investigation was led by Lieutenant Asghar, who – we have a past” (T. 98). He explained that he knew Lieutenant Asghar from when he worked at the 67th Precinct and Strategic Response Group 3 (T. 63). Respondent did not have any dealings with Lieutenant Asghar at the 67th Precinct, but, when he worked with him at Strategic Response Group 3, they did not have a good relationship, as they did not “see eye to eye on a lot of things” (T. 63-64). He felt that Lieutenant Asghar disliked him (T. 120). Respondent recalled an occasion where his then-partner told him in confidence that Lieutenant Asghar asked him, referring to Respondent, “How can you work with this guy?” (T. 64). Respondent never approached Lieutenant Asghar about his comment since Lieutenant Asghar was a Sergeant at the time and he did not want to reveal his partner as the source of the information (*Id.*).

Respondent opined that, if Lieutenant Asghar had not been involved in the instant matter, it “wouldn’t have reached this level” (T. 99). Respondent believed that Lieutenant Asghar “definitely had a personal involvement” as he conducted three or four additional GO-15 interviews with Respondent regarding unrelated incidents after the October 23, 2020 interview (T. 99). Either Lieutenant Asghar or his Sergeant would appear at Respondent’s command two to three days per week, so often that it became a running joke in the building and amongst his fellow Members of the Service (T. 99-100). This caused Respondent to feel stressed, as he believed that he “shouldn’t come to work worrying about a Lieutenant, who clearly favors me more than others” (T. 100). Respondent testified that he spoke to the Employee Assistance Unit for approximately three hours about how he felt like he as “clearly being targeted” (T. 101).

Specification 1: Off-Duty Incident

In accordance with Respondent's plea of Guilty, I find him Guilty of Specification 1. At trial, Respondent admitted that he was involved in a motor vehicle collision that resulted in property damage, he left the scene of the collision, and he failed to provide his driver's license information, insurance information, or other pedigree information to the other motorist involved in the collision.

Specification 2: Misleading Statements⁴

I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent made misleading statements when being questioned during his Department interview on October 23, 2020.

At the time of the charged misconduct, a misleading statement was defined under Patrol Guide Procedure 203-08 (since moved to Administrative Guide 304-10) as: "A statement that is intended to misdirect the fact finder, and materially alter the narrative by: [a] Intentionally omitting a material fact or facts; [b] Making repeated claims of 'I do not remember' or 'I do not know' when a reasonable person under similar circumstances would recall, or have been aware of, such material facts; or [c] Altering and/or changing a member's prior statement or account when a member of the service is confronted with independent evidence indicating that an event did not occur as initially described, will generally be considered a misleading statement."

Turning to the substance of Respondent's interview, the most material statements at issue are Respondent's declarations that he physically "gave [the motorist] paperwork," "his insurance [and] registration," when he was asked by Sergeant Huang if he provided his vehicle documents to the motorist (Dept. Ex. 2A at 18-20). At trial, Respondent altered his prior statements and

⁴ While the specification alleges that Respondent did not fully cooperate, the Tribunal finds that characterization vague. Instead, since the gravamen of the alleged misconduct appears to be offering misleading statements during the investigation, the specification will be analyzed as such.

admitted that he did not exchange his insurance card, driver's license, or registration with the motorist, nor did he provide the motorist with any pedigree information, including his name or that he was a police officer. I find Respondent's statements to be material and misleading, as they intended to misdirect the investigators from Respondent's misconduct and alter the narrative of the accident in such a manner that, if believed, would absolve him of responsibility. Only after being presented with the independent evidence, including the video footage (Dept. Ex. 1), did Respondent admit that he left the scene of the accident without providing the required documents to the motorist. As such, I find that Respondent made misleading statements here.

Respondent also made material declarations at his official Department interview regarding the moment when the motorist pulled over his vehicle to the side of the street (Dept. Ex. 2A at 21-23, 32-33). When investigators asked Respondent if he told the motorist to pull over, Respondent initially denied that he did so, stating, "For what? No" (Dept. Ex. 2A at 21). Respondent then replied to the investigators with questions in response to their questions, including, "Why would I tell him that?" and "So if I'm back in the vehicle leaving, why would I tell somebody to pull over?" (Dept. Ex. 2A at 21-22). After Captain Guven informed Respondent that they were in possession of video footage that captured Respondent telling the motorist to pull over, Respondent stated, "That's what I'm trying to understand. If I'm in the vehicle that means everything's already exchanged. So there's no need for me to tell him to pull over" (Dept. Ex. 2A at 22). When asked again by investigators if he did or did not tell the motorist to pull over, Respondent denied twice more that he did before finally stating that he did not recall (Dept. Ex. 2A at 32-33). At trial, Respondent admitted that he did in fact tell the motorist to pull over his vehicle (T. 65).

I find Respondent's statements at his official Department interview regarding telling the motorist to pull over to be material and misleading, as they intended to misdirect the

investigators and materially alter the narrative. Respondent appeared to be purposely evasive during this line of questioning. He made repeated denials and attempted to divert the conversation away from his transgressions by responding to a question with a question instead of definitively answering the investigators' questions. After he was presented with the video footage that captured him saying, "Hey, right by this car," to the motorist before the motorist proceeded to pull over his vehicle (Dept. Ex. 1 at 00:33:05-00:33:41), Respondent further provided confusing answers that were unrelated to the moment of the accident at issue before stating that he did not recall. As such, I find that Respondent made misleading statements on this material factual assertion.

Respondent also made the material declaration that he did not recall if there were additional occupants in his vehicle when the accident occurred (Dept. Ex. 2A at 14-16). I find that Respondent, in making these repeated claims of "I don't recall," made misleading statements, as a reasonable person under similar circumstances would recall if there were other occupants in the vehicle with him during the incident. It is not credible that Respondent failed to recollect if there was another individual present in his car with him when he rear-ended another vehicle and left the scene of the accident.

At his official Department interview, the investigators asked Respondent several questions about the exact location of the accident. Respondent stated that he did not recall the cross street of the accident location, but told investigators that he knew the accident occurred on Fifth Avenue, determining that the cross street was "approximately 42nd Street and up" (Dept. Ex. 2A at 7-10). I find that Respondent was not attempting to be purposely evasive when he told investigators that he did not recall the cross street of the accident location due to his admissions that the accident occurred on Fifth Avenue in the vicinity of 42nd Street. It is plausible that, approximately two months after the incident, Respondent did not remember that the accident

occurred on 34th Street, and, instead, believed that the accident may have occurred near 42nd Street. Even if Respondent was purposely trying to mislead the investigators, the factual assertion of the exact cross streets of the accident is a *de minimis* detail that is not essential to the determination of the issue, which more so concerns Respondent leaving the scene of the accident without providing the motorist with his information.

Respondent was also asked questions by investigators about what he was doing prior to the accident. Respondent told investigators several times that he did not recall what he was doing before the accident other than he “was driving” (Dept. Ex. 2A at 4-7). Although Respondent made repeated claims that he did not recall what he was doing prior to the accident, I find that Respondent did not make misleading statements intended to materially alter the narrative since these statements were not material factual assertions. Understanding what Respondent was doing prior to the accident has minimal relevance and is not essential to the issue in this matter.

The Department Advocate argued that Respondent did not follow the dictates of Patrol Guide procedure 206-13 by being evasive when answering questions, diverting attention from the question by asking investigators to answer the question for him, and showing selective memory to the point where Captain Guven lost his patience with Respondent (T. 10-11). Patrol Guide procedure 206-13(12) requires Members of the Service to “answer questions specifically directed and narrowly related to official duties.” As set forth above, Respondent made misleading statements at his official Department interview, and was consistently evasive and unforthcoming when he answered the questions posed by the investigators. Therefore, I find by a preponderance of the credible, relevant evidence that Respondent did not fully cooperate with Special Operations Division Investigations Unit investigators when being questioned.

I do not credit Respondent's defense that Lieutenant Asghar did not like Respondent and had some sort of "personal involvement" in his case that caused this matter to escalate into disciplinary proceedings. Lieutenant Asghar credibly testified that, while he was assigned to the 67th Precinct and Strategic Response Group 3 at the same time as Respondent, he did not recall having any interactions or contact with Respondent at either assignment location. Respondent testified that Lieutenant Asghar and he had a "past" and did not "see eye to eye on a lot of things," but admitted that he did not have any dealings with him at the 67th Precinct.

Regarding the time when they were both assigned to Strategic Response Group 3, Respondent testified that his then-partner told him that Lieutenant Asghar made a comment about Respondent saying, "How can you work with this guy?" Respondent, however, did not hear this comment, nor did he ever have a conversation with Lieutenant Asghar about the comment or his apparent dislike for him. Respondent did not indicate that he believed Lieutenant Asghar disliked him or had an issue with him at his official Department interview. At trial, Respondent also did not indicate that he had any other specific negative experiences involving Lieutenant Asghar prior to his official Department interview. Respondent's recent negative experiences with Lieutenant Asghar appeared to stem from the additional GO-15 interviews Lieutenant Asghar conducted with Respondent that were unrelated to this incident and occurred after his October 23, 2020, interview. However, I find that the record provides no credible indication that Lieutenant Asghar acted outside of his regular assigned duties as a lieutenant in the Special Operations Division Investigations Unit after being assigned Respondent's case.

Accordingly, based upon the foregoing, I find Respondent Guilty of Specification 2.

Specification 3: Discourtesy

I find that the Department has failed to meet its burden of proof by a preponderance of the credible, relevant evidence that Respondent was discourteous to Special Operations Division Investigations Unit investigators during a Department interview.

The Department Advocate argued that Respondent was discourteous due to “his tenor in terms of not answering questions, but also his voice and how he’s just very flippant about the whole situation” (T. 135). Lieutenant Asghar testified that Respondent’s demeanor and attitude was evasive and not forthcoming in the interview. He described Respondent as dismissive when he smiled at his PBA delegate, but acknowledged that Respondent did not raise his voice or shout during the interview. Respondent testified that he did not raise his voice, tell the investigators to stop the questioning, use profane or abusive language, or act in a discourteous manner. After a careful review of the audio recording and corresponding transcript of Respondent’s official Department interview, I agree, and find that Respondent was not discourteous to the Special Operations Division Investigations Unit investigators during the interview.

The Tribunal is mindful of the need for discipline within the Department, and that it is important for officers to act courteously toward their supervisors. However, even in a paramilitary organization, not every conflict with a supervisor amounts to misconduct. The words, tone, and context of the exchange must be evaluated. After listening carefully to the audio recording of the interview, in conjunction with the testimony of Lieutenant Asghar and Respondent, I am not persuaded that Respondent was discourteous.

It is to be expected that an official Department interview may generate an adversarial setting since investigators are often attempting to gather information regarding misconduct when questioning the Member of the Service, which may result in disciplinary action for said Member

of the Service. Here, the Special Operations Division Investigation Unit investigators clearly became frustrated during the questioning of Respondent when they did not receive the answers they wanted from him. Rather than take a measured approach to the questioning, Captain Guven, in particular, expressed his frustration by calling Respondent a “wise guy” and telling Respondent that he was “not buying the fact that [he didn’t] remember certain details” by “looking at [his] face” (Dept. Ex. 2A at 23, 31). While Respondent was often evasive and unforthcoming when he answered the investigators’ questions, this behavior was not disrespectful to the investigators. Respondent maintained his composure throughout the interview, as he did not yell, raise his voice, use profanity, or call the investigators names. Therefore, I do not find that Respondent’s actions rose to the level of discourtesy.

Accordingly, based upon the foregoing, I find Respondent Not Guilty of Specification 3.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department’s Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent’s employment record was also examined (*see* 38 RCNY §15-07). He has no formal disciplinary history.

Respondent, who was appointed to the Department on January 31, 2006, has been found guilty of making misleading statements. The Disciplinary Guidelines establish that the presumptive penalty for intentionally making a misleading official statement is 30 penalty days and dismissal probation. Respondent also pled guilty to leaving the scene of the collision and failing to provide his driver’s license information, insurance information, or other pedigree information to the other motorist involved in the collision. The Disciplinary Guidelines establish

that the violation of the failure to comply with proper driving rules and regulations may be adjudicated by a Schedule “A” Command Discipline, which carries a penalty range from oral admonishment up to five (5) penalty days⁵ (*see* P.G. § 206-03).

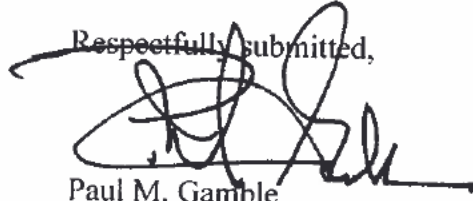
Respondent rear-ended a motorist and left the scene of the accident without providing his required documentation information, which equates to committing a traffic infraction. At his official Department interview regarding the incident, Respondent demonstrated an inability to conform to Department guidelines when he made misleading statements. The goal of any internal investigation is to retrieve the truth, and making misleading statements during an official investigation is contrary to that goal. Instead of fully cooperating with the investigators during the questioning by providing straightforward and truthful answers, Respondent complicated what should have been a standard, clear-cut inquiry by replying to questions in an evasive and unforthcoming manner. Taking all of the relevant circumstances into account, a significant forfeiture and period of monitoring are warranted. In connection with Specification 1, I find that a forfeiture of five (5) vacation days is sufficient to address the charged misconduct. In connection with Specification 2, I find that a forfeiture of 30 vacation days and one-year dismissal probation is sufficient to address the charged misconduct.

Accordingly, I recommend that Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Administrative Code § 14-115 (d), during which time he is to remain on the force at the Police

⁵ Alternatively, though not cited at trial, the presumptive penalty under the Guidelines for failure to remain at the scene of an off-duty police incident is also five (5) penalty days.

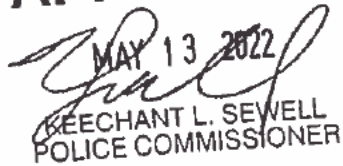
Commissioner's discretion and may be terminated at any time without further proceedings. I further recommend that Respondent forfeit a combined 35 vacation days.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Paul M. Gamble", written over the text "Respectfully submitted,".

Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

MAY 13 2022

KEECHANT L. SEWELL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER DYNEL POWELL
TAX REGISTRY NO. 940544
DISCIPLINARY CASE NO. 2020-22821

Respondent was appointed to the Department on January 31, 2006. On his three most recent annual performance evaluations, Respondent received overall ratings of "Exceeds Expectations" for 2018, 2019 and 2020. He has been awarded seven medals for Excellent Police Duty.

Respondent has no formal disciplinary history. He was placed on Level 1 Force Monitoring from February 2008 to February 2009 for having received three or more CCRB complaints in one year.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials